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10/753,404	01/09/2004	Cecile Sandin	018798-129	7896

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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/753,404	Applicant(s) SANDIN ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-6 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. The election by telephone of 1-13-06 made **without** traverse was affirmed in the reply filed on 4-24-06.

Specification

Drawings

2. The drawings were received on 4-24-06. These drawings are approved by the Examiner.

Description

3. The disclosure would be in better form if in paragraph 35, fourth line from the bottom, “and support members” were deleted to be consistent with the terminology used to describe element 14 in paragraph 34.

Claim Rejections - 35 USC § 112

4. Claims 7-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 7, a positive structural antecedent basis for “the leg opening” on line 14 should be set forth. In claim 7, it is unclear whether lines 17 et seq define a process for making the product of lines 1-16 or whether it is being claimed that the article includes folded parts welded to the inner cover sheet, i.e. always has an inturned edge (Note Applicant’s remarks with respect to the prior art)? Note also the discussion in the following paragraph. Are the folded parts in claim 8 and those in claim 7 one and the same, i.e. is it being claimed that only one portion has side edge portions with folded parts or only one portion can include folded parts per se?

5. Claims 7-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As originally filed the application disclosed a pants or panty type absorbent article having front and rear portions defined by inner and outer cover sheets with lateral side parts including side edge portions which are overlapped singly, i.e. no folds, and welded to each other along a seam which weld seam is exposed to only shear forces, note the first full paragraph of page 4 and paragraph 10, last five lines of the instant application. During manufacture, see Figures 2-7, the side edge portions constituted by the cover sheets in one of the front or rear portions are folded over so that the inner surface of the side edge portion faces the remainder of the inner cover sheet, the pants blank or panty blank is then folded transversely so that the end edges of the front and rear regions, and thereby the cover sheets, lie end edge to end edge and the side edge portions of the other of the front and rear portions overlap the folded side edge portions

of the one of the front and rear portions, i.e. the part of the folded side edge portion overlying the inner cover sheet bears directly against the inner cover sheet of the other of the front and rear portion, the overlapping side portions are then connected by a weld seam along the full length of the side edge portion to define pants or panty. In use such pants or panty appear as shown in Figure 1, i.e. singly overlapped and welded side parts with the seam exposed to only shear forces, i.e. no folds in side edge portions. However, see discussion in the previous rejection, it is not clear that this is what is now being claimed in claims 7-8 as amended and thereby, claims 9-13, and new claims 14-15. This lack of clarity is exacerbated because Applicant did not specifically point out the support for the amendments made to claims 7-13 nor new claims 14-15. See MPEP § 714.02 and 2163.06. For a first specific example, the original application disclosed such folded parts be defined during the process of manufacture but no folded parts during use (Note again the first full paragraph on page 4 and the last five lines of paragraph 10 as well as Figures 1 and 7, as originally filed), but it is not clear this is what is now claimed in lines 17 et seq of claim 7. If claim 7 is claiming the folds remain or are permanent in the side parts, where is this originally disclosed? For another example, the last section of claim 7 now requires each side edge portion of at least one of the front and rear portion comprise a folded part defined by an end edge of the inner cover being folded over to face the inner cover. As best understood, the “end edge” of the inner cover sheet is its longitudinal end edge since the application as originally filed defines the edges at longitudinal ends of other structures as being “end edges” thereof and the edges at lateral or transverse edges thereof as being “side edges”, i.e. consistent interpretation. Also it is noted that only the end edge of the inner cover sheet at a minimum, not the side edge portion, i.e. the inner and outer cover sheets, at a minimum is claimed as defining

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the folded part. Therefore, where does the original application provide support for such folding of the end edge of the inner cover sheet as claimed? For a third example, as discussed in the preceding paragraph, it is unclear whether claim 8 requires its folded parts that only one of the front and rear portion include be the folded parts of claim 7 or not? If not, where does the original application provide support for the claimed structure? The comments with respect to claim 7 also apply to new claims 14 and 15. Support for the current amendments and new claims 14-15, as well as any amendments made to 7-15 in response to this Office action, should be specifically pointed out, i.e. where the disclosure provides support for the combination of elements in a single embodiment of the scope as set forth in each of claims. See MPEP § 714.02 and 2163.06 again.

Claim Language Interpretation

6. Due to the issues raised in paragraphs 4-5, as best understood in light of the specification as originally filed, lines 17 et seq of claim 7 are interpreted to require that, at a minimum, during manufacture each side edge portion of at least one of the front and rear portions comprises a folded part defined by, at a minimum, a portion of the longitudinal end edge of the inner cover sheet being folded over so as to face the remainder of the inner cover sheet and such folded part directly bears against and is connected to the inner cover sheet of the respective side edge portion of the other of the front and rear regions by a weld seam extending along the full length of the side edge portion. It is noted that the claim does not require the folded part to be coextensive with the side edge portion from waist opening to respective leg opening nor that the side edge portion of the other of the regions not be folded. Therefore, as best understood, the

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claims are product by process claims, see MPEP 2113 (Even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself, i.e. the end product. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by another process). Therefore what is the end product of claim 7? As best understood, claim 7, and thereby, claims 8-15, are interpreted to include at a minimum an absorbent article as claimed on lines 1-16, e.g. pants or a panty having overlapped side edge portions, as well as the inner cover sheet of each overlying side edge portion being directly connected to the outermost surface, e.g. the outer cover sheet, of the respective underlying side edge portion by a weld seam extending along the full length of the side edge portion which extends from the waist opening to the leg opening, i.e. the end product of lines 17 et seq of claim 7. It is noted that the end product as understood does not require any permanent folds in the side edge portions of the article, e.g. singly overlapped side edge portions, when in use. Claim 8 is considered to require the folded parts to be those of the side edge portions claimed in claim 7, i.e. the end product of claim 8, at a minimum, is the same as that of claim 7. With regard to claims 9 and 12-13, the weld seam is interpreted as the seam formed by the weld, i.e. from the laterally innermost portion of the weld to the lateral outermost, i.e. terminal, edge of the side portion and thus the width of the weld seam is the width of such seam not the width of the weld. Also with regard to claim 11, it is noted that $1\text{N}/25\text{mm}=150$ grams force/inch. Claim 14 requires the underlying side edge portions of the end product be those of the rear portion. The end product of claim 15, at a minimum, as best understood, is the same as that of claim 7.

Claim Rejections - 35 USC § 102/103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fleischer '728.

See Claim Language Interpretation section supra and '728 at Figures 1-4 and 7-8, page 6, line 20-page 7, line 13, page 10, line 19-page 11, line 19, page 11, line 29-page 12, line 33, page 13, lines 7-9 and 28-30, page 15, lines 19-20, the paragraph bridging pages 15-16, page 17, lines 6-9.

Claim 7: '728 teaches an absorbent article in the form of diaper pants or a sanitary panty 10 with a waist opening 15 and two leg openings 14, an absorbent body 18 enclosed between an inner, liquid-permeable cover sheet 16 and an outer cover sheet 17, at least one of said cover sheets being made of a thermally-weldable material, see the paragraph bridging pages 10-11, a front portion 11, a rear portion 12 and a crotch portion extending between the front and rear portions, wherein the crotch portion includes and is delimited by the leg openings 14 of the absorbent article, wherein the front portion and rear portion have side parts extending laterally outside the absorbent body from the waist opening to the leg openings, see Figures 3-6, and which are at least partially elastic, see elements 20-21, wherein the side parts include respective

side edge portions extending from the waist opening to the respective leg opening and the inner cover sheet of each overlying side edge portion is directly connected to the outermost surface, e.g. the outer cover sheet, of the respective underlying side edge portion by a weld seam extending along the full length of the side edge portion which extends from the waist opening to the leg opening, see Figure 4 and compare to Figures 1 and 7 of the instant application, and cited portions of '728 supra.

Claim 8: see Figure 4, i.e. no folded parts in the other of the front and rear portions.

Claims 9 and 12-13: see, e.g., page 11, lines 34-36, page 12, lines 9-10, page 17, lines 6-9 of '728 and Claim Language Interpretation section supra.

Claims 10-11: see Claim Language Interpretation section supra and page 12, line 24-page 13, line 9, i.e. the weld seam can be torn open and the weld seam has a strength of 10-45 N/25mm.

Claims 14-15: See Claim Language Interpretation section supra and, e.g. Figure 4 and page 12, lines 10-12 and claim 5 of '728, i.e. the inner cover sheet 16, e.g. of the front portion or the rear portion, is directly connected by welding, i.e. sonic or heat, to the outermost surface of the underlying side edge portion, e.g. of the rear portion or front portion, respectively.

Claims 7-15: See Claim Language Interpretation section supra, i.e. the claims are considered product by process claims, i.e. if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process, and the discussion of the teachings of '728 supra. Accordingly, although not explicitly taught as being made by the same process as the claimed product/article, as best understood, since the product/article of '728 also includes pants or a

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panty which have overlapped side edge portions, as well as the inner cover sheet of each overlying side edge portion being directly connected to the outermost surface, e.g. the outer cover sheet, of the respective underlying side edge portion by a weld seam extending along the full length of the side edge portion which extends from the waist opening to the leg opening, i.e. singly overlapped and welded side edge portions with the seam exposed to only shear forces, i.e. no permanent folds in side edge portions, the article of the claims is deemed the same as or obvious from the '728 absorbent pants or panty.

Response to Arguments

9. Applicant's remarks of 4-28-06 have been considered. With regard to the matters of form, such remarks are either deemed moot in that the issue discussed has not been reraised or is deemed not persuasive for the reasons set forth supra. With regard to the prior art rejection, such arguments are deemed not persuasive in that they are narrower than the scope of the original application, the claim language and the prior art teachings. With regard to the latter it should be noted that, e.g., the edge portions of Figure 4 during use and those of the instant application Figure 1 appear to be identical, that is overlapping with a seam that is subject only to shear forces, i.e. the inturned edge portions are present during production, see Figure 7 of the instant application and weld 12 therein, not wear, see Figure 1 and first full paragraph on page 4 of the instant application.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

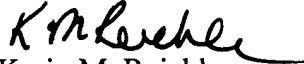
Any new grounds of rejection were necessitated by the amendments to claims 7 and 8 and thereby, claims 9-13 dependent therefrom, and the addition of new claims 14-15.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
July 4, 2006